

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of)	
)	
Petition of NewPath Holdings, Inc.)	CC Docket No. 00-50
For an Expedited Declaratory Ruling on the)	
Scope of Unbundled Access to the)	
High-Frequency Portion of Loops)	

**COMMENTS OF AT&T CORP. IN SUPPORT OF
PETITION FOR DECLARATORY RULING OF NEWPATH HOLDINGS, INC.**

AT&T Corp., by its attorneys, hereby submits these Comments in support of the Petition for Declaratory Ruling ("Petition") filed by NewPath Holdings, Inc. ("NewPath") in the above-captioned proceeding.^{1/}

In its Petition, NewPath asks that the Commission make clear that the obligation established in the Commission's Line Sharing Order requiring incumbent local exchange carriers ("ILECs") to provide nondiscriminatory, unbundled access to the high-frequency spectrum ("HFS") portion of a loop also applies when a competitor is reselling the ILEC's voice services. AT&T supports this request and urges the Commission to issue the clarification sought by NewPath, as well as the clarifications of the Line Sharing Order requested previously by AT&T and MCI WorldCom.^{2/}

^{1/} In the Matter of Petition of NewPath Holdings, Inc. For an Expedited Declaratory Ruling on the Scope of Unbundled Access to the High-Frequency Portion of Loops, Petition for Expedited Declaratory Ruling of NewPath Holdings, Inc., March 14, 2000 ("NewPath Petition").

^{2/} In the Matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, ("Line Sharing Proceeding"); Petition of AT&T Corp. for Expedited Clarification or, In the Alternative, for Reconsideration (February 9, 2000) ("AT&T Petition"); id., Petition for Clarification of MCI WorldCom (February 9, 2000) ("MCI WorldCom Petition").

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I. NEWPATH’S REQUEST TO APPLY LINE-SHARING REQUIREMENTS TO RESALE LOOPS IS FULLY CONSISTENT WITH THE OBJECTIVES AND FRAMEWORK OF BOTH THE LINE SHARING ORDER AND THE COMMISSION’S LOCAL COMPETITION RULES.

The Commission adopted the Line Sharing Order because it recognized that ILECs would wield substantial cost and marketing advantages against CLECs’ provisioning of advanced services if only ILECs could furnish data service over the same line used to provide voice service.^{3/} As a partial answer to that problem, the Commission created a new HFS network element to allow the sharing of the loop by an ILEC’s voice service and a CLEC’s advanced data service. NewPath seeks to ensure that this new HFS network element is equally available, regardless of whether the ILEC is providing voice service on a retail or wholesale basis.

The relief sought by NewPath is fully consistent with the language and competitive objectives of the Line Sharing Order.⁴ Indeed, the Commission noted that line sharing is not designed to “permit incumbent LECs to become entrenched in the provision of voice service” but instead is aimed at helping “competitive LECs to continue to compete with incumbents for the provision of a full range of services.”^{5/} Though the Line Sharing Order was intended to redress competitive inequities, the ILECs are seeking to create new inequities by establishing themselves as the only voice providers able to provide consumers a bundled, single-line offering of voice and DSL service. As the NewPath Petition makes clear, however, the same “impairment” analysis and rationale that justified the relief granted to data CLECs (DLECs) in the Line

^{3/} Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) (“Line Sharing Order”) at ¶ 33, 39-41, 56-59.

⁴ See Line Sharing Order at ¶ 47 (noting that competitors are entitled to “obtain combinations of network elements and use those elements to provide circuit switched voice service as well as data services”); id. at n.163 (endorsing line-sharing arrangements between voice CLECs and data CLECs).

^{5/} Id. at ¶ 57

Sharing Order applies with equal force in circumstances in which a reseller utilizing an ILEC loop wishes to bundle advanced data services over a single line to end users.^{6/}

The NewPath request also is fully consistent with the Commission's long-standing commitment to spur competition through a variety of entry strategies: resale, competitor use of unbundled network elements (UNEs) and combinations of such elements, and full-fledged facilities-based competition.^{7/} As the Commission has noted previously, Congress in Section 251 of the 1996 Act "neither implicitly nor explicitly expresse[d] a preference for one particular entry strategy."^{8/} Competing voice service providers, however, will be severely disadvantaged if the Commission's rules are construed to preclude them from obtaining nondiscriminatory access to the same functionalities and operational procedures utilized when an ILEC shares the HFS portion of its loop with itself, its advanced services affiliate, or a DLEC.

As evidenced by the NewPath Petition, as well as the Petitions for Clarification filed by both AT&T and MCI WorldCom,^{9/} some ILECs continue to resist the mandate of the Line Sharing Order by hindering resellers and competitive carriers using the unbundled network platform (UNE-P CLECs) from furnishing both voice and advanced services over a single loop. Seizing upon a putative ambiguity in the Line Sharing Order, some ILECs claim that they are under no obligation to provide competing voice service providers with unbundled access to the functionalities and operational procedures that enable separate use of the HFS portion of a loop for high-speed data services.^{10/} As several CLECs have pointed out, however, the language in

^{6/} NewPath Petition at 6-12.

^{7/} Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 12 (1996) (subsequent history omitted).

^{8/} Id.

^{9/} See NewPath Petition at 4-5, 13. AT&T Petition at 5-9; MCI WorldCom Petition at 5.

^{10/} See Line Sharing Proceeding, BellSouth's Opposition to Petitions for Reconsideration and /or Clarification at 3-11 (March 22, 2000); id., Comments of SBC Communications on Petitions

the Line Sharing Order relied upon by the ILECs simply reinforces the unremarkable propositions that mandatory line-sharing obligations are only imposed upon ILECs and that the HFS portion of a loop leased or controlled by a CLEC may not be used by a DLEC without the CLEC's permission.^{11/} The ILECs, however, are impermissibly seeking to use language designed simply to clarify the scope of the mandatory line-sharing obligation as justification for denying voice competitors that want to utilize shared-line efficiencies access to the technical functionalities and operational procedures that make such sharing arrangements possible.

There are, in fact, no technical, economic, or operational impediments that would preclude the ILECs from providing the relief requested in the NewPath Petition or the AT&T and MCI WorldCom Petitions for Clarification. The ILECs can provide resellers and UNE-P CLECs with access to the same loop functionalities and operational procedures that are utilized when the HFS portion of a loop is used by either their advanced services affiliates or DLECs. SBC has stated publicly that "if CLECs chose to offer voice services, they could share the voice line in precisely the same way as SBC."¹² In fact, SBC averred that "*AT&T is free to offer both voice and data service over the UNE-Platform* or other UNE arrangements, whether by itself or in conjunction with an xDSL partner."^{13/} While SBC has since sought to distance itself from these statements, it has provided no technical or operational reasons for failing to provide shared-

for Clarification and/or Reconsideration at 2-4 (March 22, 2000); id., Bell Atlantic's Opposition to AT&T's and MCI's Petitions for Clarification, or, in the Alternative, Reconsideration at 3 (March 22, 2000). See also id., Reply Comments of NorthPoint Communications at 3 (March 22, 2000) ("incumbent LECs refuse to deliver the lower frequency portion of the line to a voice competitive LEC and the higher frequency portion to a DSL competitive LEC").

^{11/} AT&T Petition at 11-12; MCI Petition at 5-6, 10; NorthPoint Reply Comments, supra n. 10, at 4-6.

¹² Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-4, Reply Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas, at 25, n. 11 (Feb. 22, 2000).

^{13/} Id. at 37, n.19 (emphasis added).

line efficiencies to competing voice providers.^{14/} Regardless of who provides the voice service, the equipment and connection procedures required to provide advanced services over a shared line are the same.^{15/}

II. THE RELIEF GRANTED IN THE LINE SHARING ORDER MUST BE MADE AVAILABLE TO COMPETING PROVIDERS OF VOICE SERVICE IN ORDER TO PRESERVE AND STRENGTHEN NASCENT COMPETITION IN RESIDENTIAL MARKETS FOR BOTH VOICE AND BUNDLED SERVICES

Absent a Commission order to provide resellers and UNE-P CLECs the efficiencies of combined voice and data over an existing loop, ILECs would be able to leverage the growing demand for xDSL service -- and for bundled voice and high-speed data services -- as a means to hinder new entrants seeking to compete in both the voice and data markets. A CLEC's ability to furnish xDSL service critically -- and, in many instances, dispositively -- affects its capacity to provide consumers with a real choice in the voice and bundled services markets. The Line Sharing Order rests on the fundamental premise that, in today's convergent telecommunications marketplace, a carrier's success and survival will hinge upon its ability to efficiently integrate the provisioning of multiple services. The reality of today's telecommunications marketplace, however, is that the transition from segmented service offerings to a bundled platform is

^{14/} Statements from other ILECs have reinforced the practical feasibility of providing resellers and UNE-P CLECs equal access to the line-sharing functionalities and operational procedures obtained by DLECs in the Line Sharing Order. Both GTE and SBC's affiliate in California, Pacific Bell, have acknowledged that they (and their respective data affiliates) can provide both voice and advanced services over the same loop to a UNE-P carrier using the same procedures they would use to provide line-sharing service to other CLECs. See Public Utilities Commission of the State of California, Rulemaking of the Commission's Own Motion to Govern Open Access to Bottleneck Service and Establish a Framework for Network Architecture Development of Dominant Carrier Networks. Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks. Rulemaking 93-04-003, Investigation 93-04-002 (Line Sharing Phase), Tr. 420-24, 511-15 (April 13-14, 2000).

^{15/} See id.

occurring faster than the transition of the local exchange marketplace from a monopoly environment to an open, competitive model.

As a result of this marketplace dynamic, consumers and competitors find themselves caught in a vicious cycle: the ILECs use their ubiquitous presence and control over bottleneck facilities obtained from their legacy voice monopolies to gain an advantage in the new, high-speed data market. By obtaining a first-mover advantage with respect to the provisioning of xDSL service, they are then able to preserve and strengthen their legacy monopolies in the market for voice services by delaying implementation of the market-opening mandate of the 1996 Act while the voice market evolves into a market for bundled services.

This is no mere theoretical possibility. It is, in fact, precisely this dynamic that prompted both the Commission and the D.C. Circuit Court of Appeals to rebuff ILEC efforts to defend their local exchange monopolies through a preemptive offering of bundled local and long-distance service through a joint marketing arrangement with Qwest.¹⁶ The Commission found that, if US West and Ameritech could offer the benefits of one-stop shopping prior to opening their local markets to competition, they would obtain a decisive -- and unlawful -- competitive advantage.¹⁷

In the Qwest order, the Commission specifically recognized that a Bell Operating Company's (BOC) ability to "be the sole provider of a package of services" conferred "an enormous benefit in strengthening their position in the telecommunications marketplace."¹⁸ Further, it found that the ability to provide a full package of services in advance of their competitors created a "first mover's advantage" that would enable a BOC to build an entrenched

¹⁶ See AT&T Corp., et al. v. Ameritech Corp. et. al., 13 FCC Rcd 21438 (Sept. 28, 1998) ("Qwest Order"), *aff'd sub nom. U S West Comm., Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999) ("Qwest Appeal Order"), *cert. denied*, 120 S.Ct. 1240 (2000).

¹⁷ See Qwest Order at ¶ 39.

¹⁸ Qwest Order at ¶ 40.

full-service customer base before the major interexchange carriers could offer a comparable package of services.¹⁹ The D.C. Circuit Court of Appeals likewise recognized the dispositive effect on competition of allowing the ILECs to gain a first-mover advantage with respect to the offering of one-stop shopping for bundled services: “If the BOCs could secure this advantage without opening their local service markets, the blunting of the intended incentive would be considerable.”²⁰

The ILECs are now attempting to do with xDSL service what Congress, the Commission, and the courts have precluded them from doing with long distance service: use the allure of “one-stop shopping” for multiple services as a means to preserve and reinforce their status as monopoly providers of voice service to the residential marketplace. The ILECs seek to forestall competition in the voice and bundled services market by preserving -- for as long as possible -- their status as the only carriers capable of easily and cost-efficiently providing voice and high-speed data services.

If anything, the threat to competition posed by a scenario in which the ILECs are the only practical choice for a bundled voice/xDSL offering is even more acute than the threat posed by the bundling of voice and long distance services that was prohibited in the Qwest joint marketing case. Unlike the market for long distance service, the market for advanced, high-speed data services is in its infancy. At the same time, residential consumers are just starting to recognize that they may now -- or will soon -- have a choice of local service providers. The same early adopters that are most likely to upgrade to high-speed data services are, in many instances, likely to be the same early adopters willing to consider switching to a new local service provider. Unless resale and UNE-P competitors in the voice market can offer these early adopters the same

¹⁹ Id.

²⁰ Qwest Appeal Order, 177 F.3d at 1060.

bundle of services that the ILECs can provide, they will be unable to obtain a meaningful foothold in the local exchange marketplace and the competitive objectives of both Congress and the Commission will be jeopardized.

The relief requested by NewPath in the above-captioned proceeding, and by AT&T and MCI WorldCom in the aforementioned Petitions for Clarification, is essential to preventing the ILECs from retaining and strengthening unfair and anticompetitive advantages in the voice market. Both the competitive objectives of the 1996 Act, and the Commission's regulatory framework established thereunder, make clear that all consumers -- not just those who are ILEC customers -- should be able to benefit from the efficiencies and cost advantages of combining voice and advanced services over a single line.

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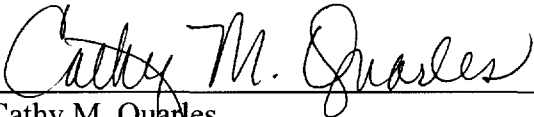
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